

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 23.6.105, 23.6.108, and)	AMENDMENT
23.6.109 pertaining to removal of a)	
member of the Tow Truck Complaint)	
Resolution Committee, removing)	NO PUBLIC HEARING
references to the Public Service)	CONTEMPLATED
Commission and satellite operations,)	
clarifying requirements regarding)	
insurance, requirements for safety)	
certification of tow trucks and)	
extending the time period for safety)	
certification of tow trucks)	

TO: All Concerned Persons

1. On October 10, 2011, the Department of Justice proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 20, 2011, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

3. The rules as proposed to be amended are as follows, new matter underlined, deleted matter interlined:

23.6.105 TOW TRUCK COMPLAINT RESOLUTION COMMITTEE - ESTABLISHMENT (1) through (5) remain the same.

(6) The Attorney General may remove any member of the committee for any reason prior to the completion of their term. In such instance, the Attorney General shall appoint the successor to any committee member. The successor member shall complete the term of the member whom they replaced and may apply to be appointed to subsequent terms.

(6) remains the same but is renumbered (7).

AUTH: 61-8-911, MCA
IMP: 61-8-908, 61-8-912, MCA

REASON: While the current rule addresses appointment to the committee, it does not address situations in which a committee member may need to be removed. The

department recognized this need when recently a committee member pleaded guilty to a federal crime, though he resigned from the committee before the Attorney General pursued removal. This proposed rule change allows the Attorney General discretion to remove members from the committee for any reason.

23.6.108 VEHICLE TOW AND STORAGE REQUIREMENTS – INSURANCE

(1) remains the same.

(2) A representative of the Montana Highway Patrol or of a local law enforcement agency may request that a qualified operator in the state rotation system improve its storage facility so as to comply with 61-8-906, MCA. If the operator wishes to contest the request, he or she may file a written complaint with the committee.

(3) Pursuant to 69-12-102, MCA, each and every commercial tow truck operator shall cause proof of insurance coverage to be filed with the ~~Montana Public Service Commission~~ Montana Highway Patrol in accordance with ARM 38.3.712, notwithstanding the fact that any individual operator may be a subsidiary of another operator and may be covered by the parent operator's insurance.

~~(4) For each satellite operation, the tow truck operator must be able to provide proof of current insurance for that location to an inspector upon request.~~

(54) A tow operator must comply with applicable insurance laws at all times, including 61-8-906 and 61-6-302, MCA. If the Montana Highway Patrol is advised at any time by the Public Service Commission that an operator's insurance is expired or cancelled, the operator will be given 48 hours to correct the problem, then he or she will be removed from the rotation list the operator must immediately cease towing and must take all trucks out of service. The operator must not resume commercial towing until the operator provides proof of valid insurance to the Montana Highway Patrol. If the operator holds a current letter of appointment, the operator will also be reinstated to the rotation list. Such placement on the rotation list is not retroactive.

~~(6) If the operator provides proof of insurance at a later date and is currently certified, the operator will be placed back on the rotation list; such placement is not retroactive.~~

~~(7) At the time of the annual safety inspection the operator must provide proof of current insurance to the inspector. Such proof must be carried in the tow truck at all times.~~

(5) Proof of insurance, through the submission of the MV-5 form to the Montana Highway Patrol, must be filed prior to the annual safety inspection.

(6) The inspector must confirm proof of vehicle insurance during the annual safety inspection, evidenced by an insurance card as required by 61-6-302, MCA. An operator need not furnish a copy of the MV-5 form to the inspector.

AUTH: 61-8-911, MCA
IMP: 61-8-906, MCA

REASON: The Public Service Commission no longer receives insurance information. Such information is gathered and kept on file through the Montana Highway Patrol. Also, due to changes to the Montana Professional Tow Truck Act in

the 2011 legislative session, all references to satellite operations have been removed. Finally, any tow truck operator without valid, current insurance may not tow any vehicle, as provided by 61-8-906, MCA. Giving tow operators a 48-hour window to address the problem exposes the state to liability if the operator continues to tow after receiving notice from the Montana Highway Patrol.

23.6.109 SAFETY INSPECTION PROCESS (1) All operators of commercial tow truck equipment in the state of Montana must have an annual safety inspection ~~as set forth in (2), (3), and (4).~~

(2) through (4) remain the same.

(5) As part of the annual inspection process, each tow truck operator shall provide the Montana Highway Patrol with an active driver roster including proof of each driver's towing certification or towing experience and proof of valid driver's license for each driver for the class of vehicle operated. A list of nationally recognized certification programs for tow truck operators that are acceptable to meet the requirements for a qualified tow truck operator under 61-8-903(b)(i) and (ii), MCA, is maintained by the Montana Tow Truck Association.

(56) All safety inspectors must have a CVSA level 1 inspector's certification before being qualified to inspect tow trucks.

(67) A Montana Highway Patrol-approved inspection form will be completed by the inspector an assigned trooper. If minimum standards are met, a Montana Highway Patrol-approved decal will be affixed to the lower right hand corner of the windshield indicating passage of the inspection. The decal will indicate the date of the inspection, the expiration date of the tow truck's insurance, and the class and license plate number of the tow truck.

(78) The safety certification is effective for one year, beginning October September 1 of each year. There will be a 60-day grace period extending to December 31 at the expiration of the certification to allow for the scheduling of an inspection of the tow truck. It is the responsibility of the tow truck operator to complete the entire inspection process by December 31. The tow truck must be taken out of service for both commercial and rotation system towing if the inspection process is incomplete by December 31.

(89) It is the responsibility of the tow truck operator to contact the Montana Highway Patrol and Montana Department of Transportation Motor Carrier Services District Captain to request the inspection. The inspection site must be relatively flat and of a hard surface to allow for movement of the inspector under the tow truck.

(9) remains the same but is renumbered (10).

(4011) Any additional tow truck placed into service by an operator must be qualified and classified prior to answering any commercial towing calls or calls from the law enforcement rotation system.

(11) remains the same but is renumbered (12).

(13) Failure to provide true and accurate information, or failure to supply updated information, required by these rules to the Montana Highway Patrol will result in immediate suspension from commercial towing for a minimum of 30 days. A tow truck operator may not commence commercial towing until complete, accurate, and updated information is provided. Following suspension, a tow truck

operator must resubmit all information required by the annual safety inspection and reapply for a letter of appointment to participate in the state rotation system.

(1214) This rule is subject to the following qualifications:

(a) remains the same.

(b) if the inspection identifies a non-safety-related defect or deficiency, the operator will be informed of the defect or deficiency and requested to correct it. Failure to correct the defect or deficiency within 30 days of notice will result in suspension from the state rotation system until the defect or deficiency is corrected;

(c) if the inspection identifies a safety-related defect or deficiency, the tow truck will be immediately taken out of service. The tow truck cannot be used in the state rotation system until the reinspection confirms that the defect or deficiency has been corrected; and

(d) if either the inspection form or certification decal is lost, removed, rendered unreadable, or destroyed, the operator must immediately notify the nearest Montana Highway Patrol office that can provide a copy of the inspection report from its files and/or reissue a certification decal.

(13) remains the same but is renumbered (15).

AUTH: 61-8-911, MCA

IMP: 61-8-907, MCA

REASON: The proposed rule changes are offered in response to the September 2010 audit of the Montana Professional Tow Truck Act by the Legislative Audit Division. Specifically, these proposed rule changes address recommendation numbers 7 and 8 of the Audit Report.

The Audit Report recommended that the Department of Justice strengthen assurance of tow truck driver licensing and that tow truck drivers have attained the minimum certification or experience by requiring operators to submit an active driver roster. This recommendation is addressed in these proposed rules under new (5). This section also addresses which specific nationally recognized certification programs are acceptable in Montana.

The Audit Report also recommended amending the administrative rules to allow greater flexibility in the timing of annual safety inspections. These proposed rules allow for a four-month inspection period between September 1 and December 31 annually.

Finally, these proposed rules allow the department to impose sanctions on tow truck operators who submit false, inaccurate, or deficient information on their forms. Such sanctions will aid the department's enforcement of these rules as noted in the Audit Report and ensure public safety.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kelley Hubbard, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail khubbard@mt.gov, and must be received no later than 5:00 p.m. on October 6, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kelley Hubbard at the above address no later than October 6, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 300.

7. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested person's request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The sponsors were notified by e-mail on August 22, 2011.

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State on August 29, 2011.